

March 9, 2015

Re: SB 277 - Revise laws related to DPHHS personal assistance services information collection

Dear Rep. Wittich and Members of the House Human Services Committee:

I am writing to urge your support for Senate Bill 277. SB 277 is necessitated because of a gross and severely inappropriate violation of privacy and abuse of power by the executive branch in the rulemaking process.

The state recently adopted administrative rules for the newly created Community First Choice program (ARM 37-690) and amended the administrative rules for the Personal Assistance Services (ARM 37-694) to more closely model each program after each other. Within each administrative rule the Governor's office inserted a provision that states:

"Effective January 1, 2015, self-directed [CFCS/PAS] provider agencies must provide quarterly reports for all self-directed personal care attendants employed by the agency, in the format specified by the department. **The quarterly report must include the names, addresses, and phone numbers,** wages, years of experience in aging and disability services, availability of employee-sponsored health insurance, whether a background check was conducted, and, if so, whether it was a fingerprint criminal background check."

As an individual who participated in the Development and Implementation Council for the Community First Choice program, which spent nearly a year formulating the program, the issue of requiring provider agencies to report the names, addresses, phone numbers, and other personal information of direct care workers was not discussed one single time. This provision simply showed up the day the proposed rules were released to the public, from what I can gather, was a backroom deal implemented without input from consumers, providers, or even direct care workers themselves.

During the public comment period for the administrative rules there was very strong opposition to this section in each rule. During the CFC comment period alone there were 10 letters in opposition to this section of the rule and only four in support, only two of which were organizations, neither of which provide direct personal assistance services. Despite the strong opposition, both sets of rules were passed containing this requirement for only self-directed providers to conduct quarterly reporting of the personal contact information of employees of private provider agencies.

As a consumer of self-directed Community First Choice services as well as an employee of a self-directed services provider agency, I feel that requiring self-directed provider agencies to report the names, addresses, phone numbers, and other personal information of the personal assistants who are not public employees but rather, employees of private provider agencies, is a blatant and inexcusable violation of employees' individual right to privacy. If provider agencies are forced to quarterly report this personal information of employees, it will then become part of the public record where it will be accessible to anyone who requests it, not just consumers who may be looking for available personal assistants.

Article II, Section 10 of the Montana Constitution, RIGHT OF PRIVACY, states, "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

In a letter from Gov. Bullock dated December 12, 2014, he provides three primary reasons why he supports the quarterly reporting of the private contact information. They are:

- Evaluate workforce availability and sustainability,
- Enhance comparative information available to consumers, and
- Improve the consistency and quality of care

While the goals that the Governor makes are worthy, direct care workers' personal privacy does not need to be invaded by having their private, personal contact information collected and subjected to being a part of the public record, accessibly to anyone, in order to achieve these goals. Further, the self-directed program in Montana states that the consumer, or his/her representative, are responsible for hiring, firing, scheduling, training, and supervising their own personal care assistants and, therefore, it is unfathomable that DPHHS would need to collect the personal contact information for each individual personal care assistant to provide ongoing training. Why could they not just work with provider agencies and the consumers who are responsible for training to accomplish such a goal? It is not, nor should it be, the place of DPHHS to provide training to direct care workers within the self-directed model of personal assistance services.

You will hear several reasons why the State thinks it needs to exploit the privacy of direct care workers. None of them are even close to being a compelling reason why the private, personal contact information of direct care workers needs to be a part of the public record and such information serves absolutely no purpose towards improving self-directed services. Despite the reasons you will hear for why the State needs this information, we made several attempts to find out such reasons and to try to have a dialogue with both the Dept. and the Governor's office but our attempts simply went unanswered.

By requiring reporting of the personal contact information of direct care workers, the State will only make it harder for individuals receiving services through the self-directed program to recruit and retain direct care workers who may not want their private, personal information subjected to public disclosure for one reason or another, including fear of harassment by any party not directly involved in service delivery who may acquire their contact information through an information request to DPHHS.

The collection of private, personal contact information of direct care workers being inserted into administrative rules is unprecedented, absurd, and inappropriate. There are far less intrusive and more effective ways to evaluate and strengthen the self-directed workforce than subjecting direct care workers to an unjust invasion of privacy.

Please vote YES on SB 277.

Sincerely,

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